



U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

February 6, 2020

**BY ECF**

The Honorable Paul G. Gardephe  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, New York 10007

**Re:   *United States v. Michael Avenatti,*  
      **S1 19 Cr. 373 (PGG)****

Dear Judge Gardephe:

Pursuant to the discussion in court at the conclusion of the trial day today, the Government respectfully submits the current draft of GX 701, which the Government requests to offer as a summary chart pursuant to Federal Rule of Evidence 1006.<sup>1</sup>

Rule 1006 provides in pertinent part that “[t]he contents of voluminous writings . . . which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation.” The Second Circuit has explained that such charts are admissible where they “summarize[] information that otherwise would have been difficult for the jury to synthesize and evaluate,” are helpful to the jury, and are “‘based upon and fairly represent competent evidence already before the jury.’” *United States v. Blackwood*, 366 F. App’x 207, 212 (2d Cir. 2010) (quoting *United States v. Conlin*, 551 F.2d 534, 538 (2d Cir. 1977)). In short, “the Government [is] entirely within its rights to use charts to draw the jurors’ attention to particular evidence culled from a voluminous set of records.” *United States v. Yousef*, 327 F.3d 56, 157-58 (2d Cir. 2003). Indeed, the Second Circuit has “regularly affirmed the use of such charts.” *Id.* at 158; *see also United States v. Casamento*, 887 F.2d 1141, 1151 (2d Cir. 1989) (“This court has long approved the use of charts in complex trials, and has allowed the jury to have the charts in the jury room during its deliberation . . .”).

The proposed summary chart fairly represents and summarizes competent evidence, providing the date and time of a number of different types of communications drawn from voluminous records. Specifically, the chart provides the date, time, and, where applicable, content of phone records (GXs 401, 403, 404, 412, 424, 430, 423, 431, 440), emails (GXs 203, 301-08), text messages (GXs 103A-G, 132, 206, 310R), search histories (GX 120), tweets (GXs 106, 107), and metadata (GX 1A). The phone records, in particular, are extremely voluminous and cannot

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<sup>1</sup> As stated in court, the Government will confer with defense counsel regarding any objections raised by the defendant to exhibits underlying the summary chart.

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conveniently be examined in court. For example, GXs 401, 403, and 404 are excel spreadsheets reflecting, in total, more than 35,000 lines of calls identified only by phone numbers and designated, depending on the entry, in one of at least five different time zones. Other phone records are substantially the same, containing hundreds of pages. While certain of the other records and communications reflected in the chart are not, in and of themselves, voluminous in terms of page count, they reflect “voluminous” information—that is, a significant amount of information regarding dates and times of communications that would be “difficult for the jury to synthesize and evaluate, thus falling well within the purview of Rule 1006,” *Blackwood*, 366 F. App’x at 212, due both to the quantity of information, and the use of multiple time zones that are not readily understandable or comparable.

In short, GX 701 both fairly represents competent evidence and will enable the jury to understand and evaluate information contained in numerous, voluminous records that would be difficult, if not impossible, for the jury to synthesize without assistance. Accordingly, the Government submits that GX 701 should be admitted into evidence pursuant to Rule 1006. Should the Court not be inclined to do so, the Government requests that GX 701 be admitted as an aid to the jury, *see, e.g., United States v. Dolney*, No. 04 Cr. 159 (NGG), 2005 WL 2129169, at \*4 (E.D.N.Y. Sept. 1, 2005), to allow the Government’s summary witness to present the information contained in the chart in a manner comprehensible to the lay jury during his testimony and far more efficiently than if no such chart were permitted.

Respectfully submitted,

GEOFFREY S. BERMAN  
United States Attorney

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Attachment

cc: (by ECF)

Counsel of Record

## Timeline of Events

Friday, March 1, 2019 to Monday, March 4, 2019 – EST

**March 1, 2019  
5:26 p.m.**

Avenatti calls  
Auerbach. Duration  
of the call is 7  
minutes 14 seconds.

GX 403, 430, & S-6

**March 1, 2019  
8:53 p.m.**

Auerbach emails  
his bio and links to  
California  
Supreme's website  
to  
jr@augustusllp.com

GX 301

**March 4, 2019  
7:58 p.m.**

Avenatti  
messages  
Geragos, "I got  
called on a very  
big case against  
Nike. This might  
make a lot of  
sense together."

GX 103A & 423

**March 4, 2019  
8:15 p.m.**

Geragos responds  
"Did I mention  
my relationship  
with the General  
Counsel is  
fantastic"

GX 103A

**GOVERNMENT  
EXHIBIT**

**701**

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## Timeline of Events

### Tuesday, March 5, 2019 - EST

March 5, 2019

8:30 p.m.

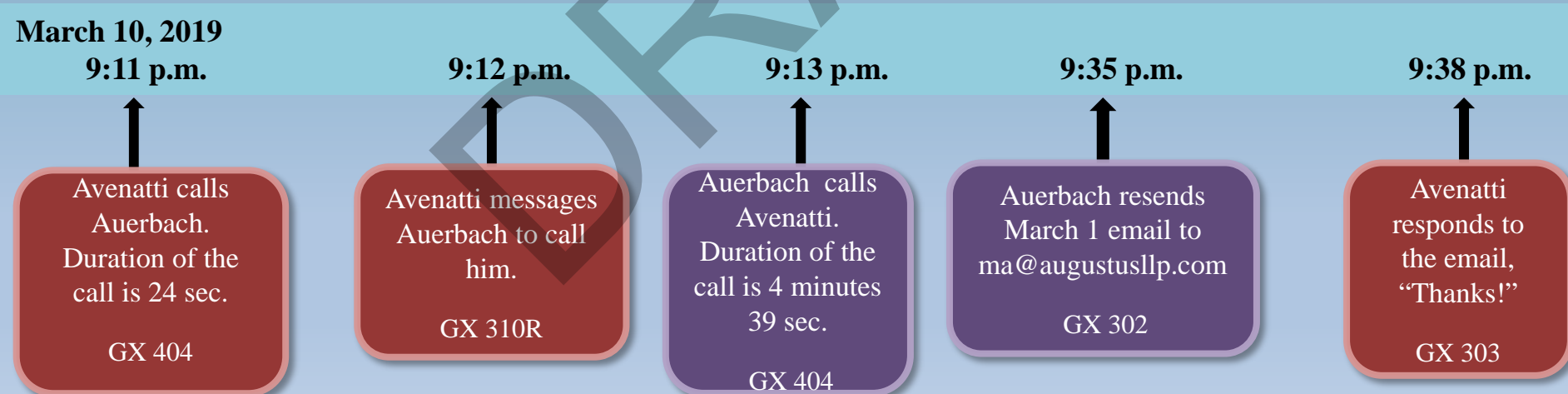


Auerbach and  
Franklin meet with  
Avenatti at an office  
in Avenatti's  
building.

GX 132

## Timeline of Events

Sunday, March 10, 2019 – EDT



## Timeline of Events

### Tuesday March 12, 2019 – EDT

Geragos  
messages Casey  
Kaplan: “Casey,  
do you have a  
minute for a very  
time sensitive  
call?”

GX 206



A Google search  
for “internal  
investigations cost”  
is conducted on  
Avenatti’s iPhone

GX 120 & S-6



Avenatti sends an  
article to Geragos  
via text message  
titled “the  
mounting costs of  
internal  
investigations”

GX 103B



**March 12, 2019**  
**12:01 p.m.**

**8:55 p.m.**

**8:56 p.m.**

## Timeline of Events

### Wednesday, March 13, 2019 – EDT

Geragos has a call with Scott Wilson. Duration of the call is 2 minutes 54 sec.

GX 203 & 424



Geragos messages Avenatti, "Forwarded the email where they want us to go to them. I say we say our place or no place"

GX 103B



Avenatti responds to Geragos, "Bigger issue is they want us to go to Boies and not meet with Nike directly." "That will be a disaster."

GX 103B



Avenatti messages Geragos, "...I think you should convey to your contact at Nike that we either deal directly with Nike or we don't meet. We are proposing to meet with lawyers at Nike so this should not be a problem. Between us, Boies will never step aside and allow us to run an investigation."

GX 103B



**March 13, 2019**  
**11:00 a.m.**

**2:09 p.m.**

**2:10 p.m.**

**2:18 p.m.**

## Timeline of Events

### Thursday, March 14, 2019 – EDT

Avenatti messages Geragos, "...I also need to know about Nike and whether I need to start arranging my presser."

GX 103C



Avenatti messages Geragos, "Can you send this to Nike?" "Avenatti is frustrated and is going to blow this wide open. If you want a chance to contain this, we need to have a meeting with you ASAP. I'm trying to help but it's about to be out of my hands. He's not going to go through Boies. If you want an atty from there at the mtg, fine. As a friend, I suggest you try and work with him because the fallout otherwise..."

GX 103C



Geragos sends a message to Kaplan, "Avenatti is frustrated..."

GX 206



Geragos messages Avenatti, "From GC: Just woke up and saw this. Do you mean in NY or LA? Also everyone is traveling overseas. I am in China my boss is in Europe. So Monday is probably not possible. Does Tuesday or Wednesday work? And can you tell me who will attend?"

GX 103C



**March 14, 2019**  
**11:15 a.m.**

**1:59 p.m.**

**2:06 p.m.**

**5:55 p.m.**



## Timeline of Events

### Thursday, March 14, 2019 – EDT

Avenatti messages Geragos, “Proposed response: In NY. We can do Tuesday latest. I will attend with Avenatti. He wants you and anyone else in house from Nike you want. You can also bring one lawyer from Boies if you want. Confidential candid settlement meeting. Let me know so I can talk him off the ledge.”

GX 103C

March 14, 2019  
5:58 p.m.

Geragos responds to Avenatti, “Edited Proposed response:...”

GX 103C

6:04 p.m.

Geragos messages Kaplan, “In NY at my office and it has to be Monday or Tuesday at the latest since I’m leaving Tuesday. Avenatti says bring anyone from Nike you want and he is okay with one lawyer from Boies if you want. Confidential mediation discussion. Let me know so I can talk him off the ledge.”

GX 206

6:23 p.m.

Geragos messages Avenatti, “From them: ‘Tuesday would work for Boies and Nike schedules. Scott Wilson will give you a call to see if we can make it work’”

GX 103C

9:49 p.m.

## Timeline of Events

Friday, March 15, 2019 to Saturday, March 16, 2019 – EDT

Geragos calls Scott Wilson. Duration of the call is 7 minutes 34 sec.

GX 203 & 424

**March 15, 2019  
11:42 a.m.**

Geragos messages Avenatti, “Tuesday at Noon at my office with Nike and one Bois”

GX 103C

**March 16, 2019  
12:01 p.m.**

Avenatti calls Rebecca Ruiz. Duration of call is 3 minutes 40 sec.

GX 130 & 404

**March 16, 2019  
5:26 p.m.**

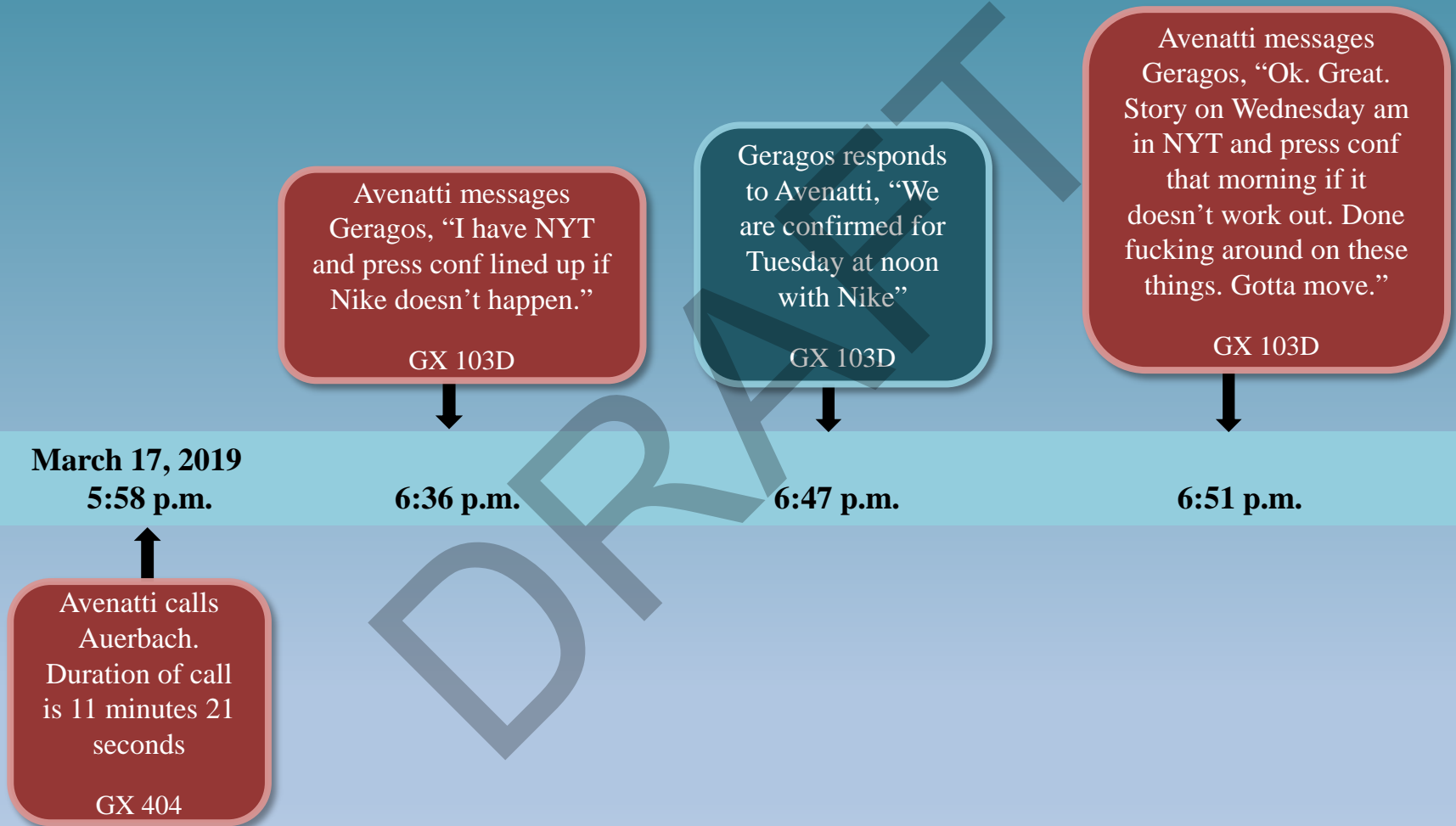
Avenatti calls Auerbach. Duration of call is 3 minutes 4 sec.

GX 404

**March 15, 2019  
9:01 p.m.**

## Timeline of Events

### Sunday, March 17, 2019 – EDT



## Timeline of Events

### Monday, March 18, 2019 – EDT

Avenatti messages Geragos, “I hear you Mark but it doesn’t change the realities of my situation. I need real money. Real money. And if I can’t get that then I’m not going to waste my time...I can’t keep counting on significant money that doesn’t materialize. I’m in a bind.”

GX 103F

Avenatti messages Geragos, “I met with the Nike client this evening. They are dead to rights.”

GX 103F

Geragos responds to Avenatti, “Just get on the plane and get here” “I have everything set up”

GX 103F

Avenatti responds, “Ok brother. I trust you.” “With March madness, the timing could not be better”

GX 103F

March 18, 2019

1:29 p.m.

Avenatti texts Auerbach, “Jeff – can you and Gary and I meet at 5 pm today?”

GX 310R

6:09 -7:02 p.m.

Auerbach sends five emails to ma@augustusllp.com Each email has a series of documents attached.

GX 304, 305, 306, 307, & 308

8:00 p.m.

Auerbach and Franklin meet with Avenatti

GX 133

10:18 p.m.

10:20 p.m.

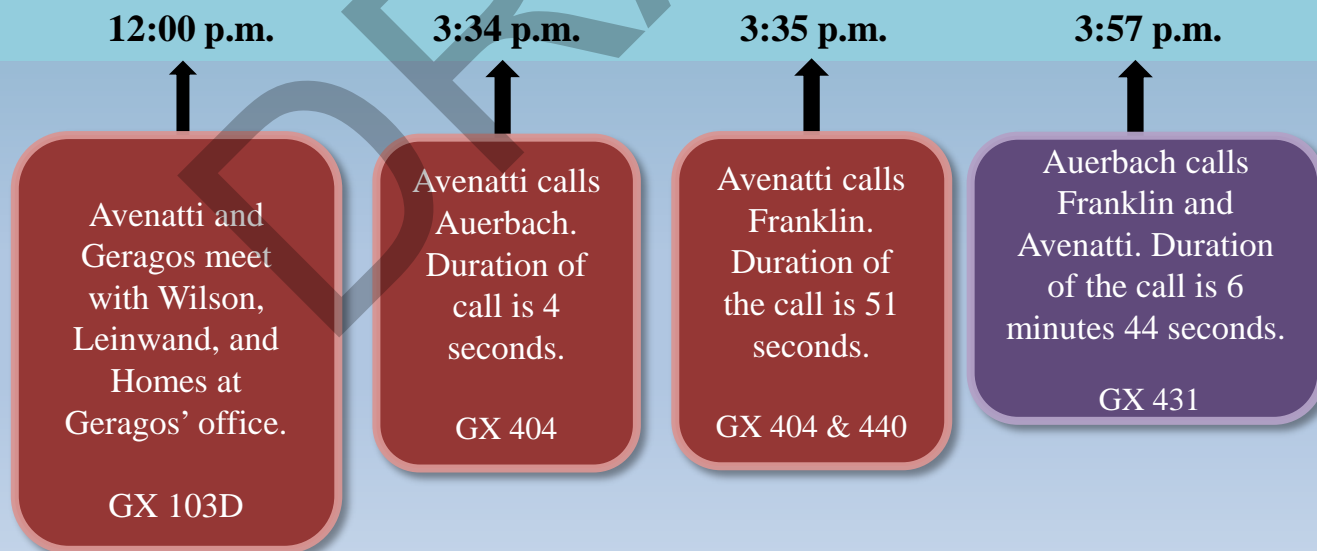
10:38 p.m.

11:05 p.m.

## Timeline of Events

Tuesday, March 19, 2019 – EDT

March 19, 2019



## Timeline of Events

### Tuesday, March 19, 2019 – EDT

Geragos calls  
Scott Wilson.  
Duration of the  
call is 1 minute  
50 sec.

GX 203 & 424

Avenatti  
messages  
Geragos,  
“Anything? If  
these guys go  
dark it is a bad  
sign.”

GX 103F

Geragos messages,  
“Scott called back  
and I told him I  
bought until  
Thursday” “But we  
agreed to talk  
tomorrow” “He said  
‘I didn’t anyone  
could control MA’”

GX 103F

Avenatti  
messages  
“What else?  
Sound  
engaged?”

GX 103F

Geragos  
responds,  
“Totally”

GX 103F

March 19, 2019  
6:55 p.m.

7:26 p.m.

7:31 p.m.

7:32 p.m.

7:32 p.m.

## Timeline of Events

### Wednesday, March 20, 2019 – EDT

Avenatti calls  
Ruiz.  
Duration of  
the call is 2  
minutes 28  
seconds.

GX 404



Avenatti messages  
Geragos, “Any  
word from  
Nike?...”

GX 103F



Avenatti and  
Geragos have a  
call with Wilson.

The call is  
recorded by FBI.

GX 1, 1A & S-10



**March 20, 2019**

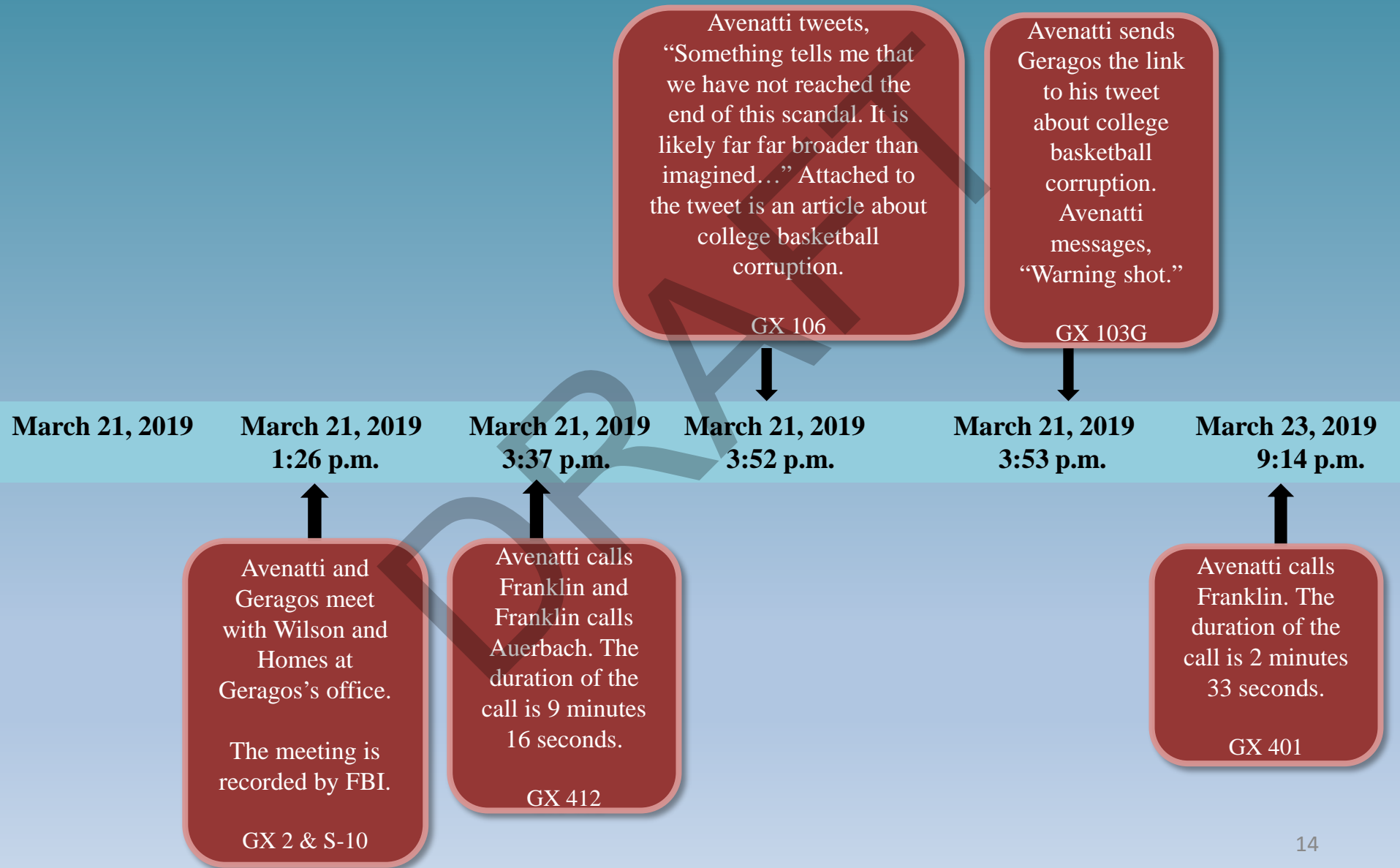
**11:18 a.m.**

**12:34 p.m.**

**5:09 p.m.**

## Timeline of Events

Thursday, March 21, 2019 to Saturday, March 23, 2019 – EDT





## Timeline of Events

### Monday, March 25, 2019 – EDT

Avenatti messages Geragos, “Call me immediately. The FBI just showed up at the client’s home.” “And pls send me the phone number for the atty.”

GX 103G

Avenatti calls Ruiz. Duration of the call is 38 seconds. Ruiz calls Avenatti. Duration of the call is 1 minute 18 seconds.

GX 130 & 401

Avenatti tweets “Tmrw at 11 am ET, we will be holding a press conference to disclose a major high school/college basketball scandal perpetrated by @Nike...”

GX 107

Avenatti calls Ruiz. Duration of the call is 3 minutes 34 seconds.

GX 401

Avenatti is arrested by federal agents at 20 Hudson Yards.

GX S-3

March 25, 2019

11:54 a.m. 12:00 p.m.

12:08 p.m.

12:16 p.m.

12:17 p.m.

12:39 p.m.

12:58 p.m.

Avenatti receives a call from Franklin. The duration of the call is 5 minutes 2 seconds.

GX 401 & 410

Auerbach messages Avenatti, “Michael, very upsetting to say the least. Please call me before going public in any way”

“Just saw CNN! Are you fucking kidding me? Pls call.”

GX 310